



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

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In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FSP/169697

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2015, under Wis. Stat. § 46.985(6)(h), and Wis. Admin. Code § DHS 65.08, to review a decision by the Milwaukee Cty Disability Services Division-DSD in regard to Medical Assistance, a hearing was held on November 17, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency has demonstrated a basis for denying Family Support Program payment for good and services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nancy Dumas and Darsell Johns
Milwaukee Cty Disability Services Division-DSD
Attention: Mark Stein-DSD
1220 W. Vliet Street, Suite 300
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. A prior final decision of the Department of Health Services (DHA case #CKW/162654) directed that Petitioner be re-enrolled in the Children's Long Term Waiver program as of December 2014.

3. Petitioner is 8 years of age ([REDACTED]). Her diagnoses included autism (moderate to severe), global development delays, severe language impairment, cognitive impairment, hypotonia [*understood by this ALJ as 'floppy baby syndrome' and means that a child has low muscle tone and reduced muscle strength*], seizure disorder and dysmorphic features from a likely genetic syndrome not specified.
4. This appeal was filed on behalf of Petitioner on October 28, 2015. The appeal states that a request for non-medical services – gym membership with one on one time with an instructor, a family zoo pass, a four point car seat harness, nonmedical transportation and a collapsible tricycle and swim classes - was being unreasonably denied by Milwaukee County. Her physician, a [REDACTED] [REDACTED] provider, has asked that these items be approved. See Physician letter dated September 8, 2015. The physician deems all to be necessary for health, safety and socialization of Petitioner.
5. Milwaukee County is the administering agency and has denied FSP payment. The reason or reasons for the denial are vague but generally seem to be that Petitioner had to obtain denials from fee for service Medicaid for the requested items.

DISCUSSION

The Family Support Program provides individual services and supports to families that include a child with severe disabilities. It is administered by the Wisconsin Department of Health Services, pursuant to Wis. Stat. § 46.985. More detail is found in the relevant rule, Wis. Admin. Code ch. DHS 65. The Department also had a policy handbook but it does not seem to be currently available on Department website. Nonetheless, the Department website does provide some guidance here:

The Family Support Program provides individual services and supports to families that include a child with severe disabilities. The program recognizes that meeting the needs of children who have severe disabilities may place hardships on a family's emotional, physical and financial resources. The program offers:

- information and help in finding services and maximizing community resources;
- limited funding to buy needed services and goods that can't be bought through other sources;
- help in linking families with other families to strengthen natural supports

<https://www.dhs.wisconsin.gov/fsp/index.htm>

The Wisconsin Administrative Code does indicate that funds "... may not be used to supplant funds currently provided to the family from another funding source. *Wis. Admin. Code, §DHS 65.05(6)(d)*. There is a similar local rule here.

The administering agency denial of FSP payment for some of the requested items for lack of a letter from Medicaid denying payment is not realistic or reasonable. That a local government agency with resources and access to the Department of Health Services far beyond that of the ordinary citizen, and that is engaged in the provision of services to a medically needy population, cannot refer to the online handbooks or the Department's Administrative Code provisions or make one or more phone calls to Department personnel to conclude that some, albeit perhaps not all of these items, are not covered by Medicaid stretches credulity.

On the other hand Petitioner does not contest the agency the right to establish rules for the program but argues that it cannot establish rules that violate Federal and State regulation of the FSP. Petitioner argues that none of the items requested here are covered by fee for service Medicaid. *See Wis. Stats. §49.46(2)*.

The Wisconsin Administrative Code specifically directs that the administering agency use FSP funds for the following that is not covered by private insurance or public assistance programs:

(6) PURCHASING GOODS AND SERVICES. (a) Administering agencies shall use funds allocated under this chapter to purchase a broad range of goods and services within the following categories:

1. Architectural modification of the family home;
 2. Child care;
 3. Counseling and therapeutic resources;
 4. Dental and medical care not otherwise covered by private medical insurance or public assistance programs;
 5. Specialized diagnoses and evaluation;
 6. Specialized diet, nutrition and clothing;
 7. Specialized equipment and supplies;
 8. Homemaker services;
 9. In-home services and attendant care;
 10. Home training and parent courses;
 11. Recreation and alternative activities;
 12. Respite care;
 13. Transportation;
 14. Specialized utility costs;
 15. Vehicle modification; and
 16. Other goods and services as approved by the department based on demonstrated family needs.
- Wis. Admin. Code §DHS 65.05(6)(a). /*

I also note that the Wisconsin Administrative Code, at ch DHS 107, specifies what may be paid for by Medicaid and in some detail. The agency has not reference any provision that indicates Medicaid payment is available for the goods and services requested here.

Given the above, I am approving immediate FSP payment for:

- the family zoo pass for this certification period in an amount not to exceed \$135.00 (a family plus pass is \$135.00 per the Milwaukee County zoo website),
- a four point car seat harness and
- nonmedical transportation.

I am not immediately approving the gym membership, collapsible tricycle or swim lessons but only for the following reason. While Petitioner's physician does indicate that these items are needed by Petitioner, the physician also indicates that she receives physical therapy. Given that, and Petitioner's medical diagnosis, it is reasonable that Petitioner utilize physical therapy services, to the extent available, through fee for service Medicaid and then seek FSP payment for such carry over exercise necessities as recommended by the physical therapist, be that the gym membership, swimming program and/or the bike or even other recommendations.

CONCLUSIONS OF LAW

The FSP incorrectly denied reimbursement of otherwise non-covered medical expenses for Petitioner.

THEREFORE, it is

ORDERED

That this matter is remanded to the Milwaukee County administering agency with instructions to provide FSP payment for:

- The family zoo pass for this certification period in an amount not to exceed \$135.00 (a family plus pass is \$135.00 per the Milwaukee County zoo website),
- a four point car seat harness and
- nonmedical transportation.

Further, the FSP must provide payment for non Medicaid services recommended by Petitioner's physical therapist.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of March, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 14, 2016.

Milwaukee Cty Disability Services Division-DSD
Bureau of Long-Term Support
[REDACTED]